ASILE
Global Asylum Governance and the European Union's Role

Country Fiche
CANADA

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Executive summary

Canada implements its *Refugee Convention* obligations through the *Immigration and Refugee Protection Act* (IRPA) and the accompanying *Immigration and Refugee Protection Regulations* (IRPR).[i] The IRPA and its regulations govern resettlement and asylum. Resettlement addresses overseas selection of refugees, and is oriented toward facilitating the movement of those chosen in advance. Laws concerning asylum address the entry and status determination of refugee claimants who arrive on their own initiative.

The leading actors in the refugee system are:

1. The Minister and the Department of Immigration, Refugees, and Citizenship Canada (IRCC) who set policy and administer the inland system and overseas resettlement program.
2. The Immigration and Refugee Board (IRB), a quasi-judicial administrative tribunal with four divisions. It adjudicates refugee claims (Refugee Protection Division), internal appeals from the Refugee Protection Division (Refugee Appeal Division), and detention reviews and inadmissibility (Immigration Division).
3. The Canada Border Services Agency (CBSA) is responsible for immigration enforcement, including initial border control, detention, and removal.
4. The Federal Court of Canada supervises the immigration and refugee system through the mechanism of judicial review

Canada's refugee resettlement model contains a public stream (wholly government funded) a community stream (mainly privately funded), and a blended stream (50/50 cost sharing). The community model has been effective in engaging Canadian individuals and organizations to take a leading role in refugee resettlement and integration. Between January 2015 and April 2020, of 154,510 refugees resettled to Canada, 84,520 persons came through private sponsorship compared to 61,320 resettled as government assisted refugees, and 8,670 through a blended public-private program.[ii] In 2019, Canada resettled a total of 30,070 refugees, a jump from 28,100 persons in 2018, which was the highest annual resettlement total of any country.[iii]

Meanwhile, in 2019, a total of 64,045 people claimed refugee status in Canada.[iv] In the same year, Canada's Immigration and Refugee Board (IRB) accepted

26,417 refugees, with 97,043 refugee claims still pending before the IRB as of 31 December 2019.[v] Canada's inland refugee system provides for a quasi-judicial oral hearing of the refugee claim at first instance, a paper-based appeal, and a final pre-removal risk assessment process undertaken immediately prior to deportation. Taken together, this system is comparatively robust; however, legislation aimed at containment has significantly limited the number of refugees who can access all, or any, of these protections.

Canada shares its only land border with the United States, and concerted attempts to prevent refugee admission at this border has been a central policy goal and point of contention. Several provisions of the IRPA act to deflect or withdraw procedural protections from those refugees who, "break containment," by travelling through the United States to claim protection in Canada. In 2004, Canada implemented the Canada-US *Safe Third Country Agreement* (STCA) which bars refugees (subject to narrow exceptions for family and unaccompanied minors) from seeking protection at official border crossings on the Canada-US border. Since 2016, 4,400 refugee claims have been deflected back to the United States under the STCA,[vi] but the true impact of the STCA lies in the number of people who are deterred in advance from attempting to enter, or who enter irregularly between designated ports of entry.

The law penalizes even those who permitted to enter on the basis of one of the STCA exceptions. In 2012, further legislation removed appeal rights for those who qualified for STCA public policy exceptions.[vii] With the deterioration of conditions for refugee claimants in the United States since 2016, the number of inland refugee claims made in Canada has risen significantly. The total of 64,045 refugee claims made in Canada in 2019 is unprecedented.[viii] Numbers of asylum seekers rose from 23,870 in 2016, to 50,390 in 2017 and 55,040 in 2018.[ix] Of the 2019 total, 16,137 claims were made at unofficial crossings at the Canada-US border in order to avoid the application of the STCA.[x] These entries – dubbed alternately as "illegal" in right-wing media, or "irregular" by the mainstream press and Liberal government – garnered considerable attention and led to the most recent significant policy development in Canadian refugee law.

In 2019, hidden in an omnibus budget bill, the government legislated a new bar on access to a full oral hearing at the IRB for an asylum seeker that had ever made a refugee claim in the United States, or in any of the other countries with which Canada shares the *Five Eyes* intelligence agreement.[xi] This includes asylum seekers who qualify for one of the exceptions under the STCA. Under prevailing

conditions for asylum seekers in the United States, many asylum seekers who made protection claims in the United States would have risked detention and *refoulement* had they had remained in the United States. Under the new bar, they would be entitled only to a Pre-Removal Risk Assessment (PRRA), and denied a statutory right of appeal to the Refugee Appeal Division prior to deportation. Although it was portrayed as a response to irregular border crossing by asylum seekers, it is unclear how many of those border crossers had actually made asylum claims in the United States before entering Canada. The new law also applies to STCA-exempt asylum seekers who had made asylum claims in the United States, even if they had not crossed irregularly into Canada.

Under the Global Compact for Refugees (GCR), Canada is piloting programs to increase educational and labour mobility pathways to resettlement in Canada. Commitments have been made to invest in technical training and asylum capacity building in several countries. TheGlobal Refugee Sponsorship Initiative is assisting to bring its model of private sponsorship model to the world. Within Canada, the GCR has had no impact on the inland refugee system. It has not been cited in case law, and new policy announcements about the inland system that are potentially relevant to the Compact have not been linked to the GCR framework.[xii]

Although the STCA is the most visible manifestation of Canada's commitment to repelling asylum seekers, Canada invests extensive resources in interdiction and deflection at airports and visa offices abroad in service of Canada's control over its territory. Canada funds border enforcement in the global South to prevent departure[xiii], employs "migration integrity" specialists to monitor passengers boarding planes for Canada, enlists private air carriers to do the same, and maintains an extremely restrictive visa policy[xiv] and also encourages other states to tighten their policies.[xv] Canada's low-visibility, extraterritorial bordering apparatus is effective and attracts little public scrutiny or opprobrium,. It enables Canada to present itself as the benign face of sovereignty: a human rights compliant state that chooses to resettle a handful of refugees while also avoiding receiving more than a trickle of the world's asylum seekers. Canada is often commended for how well it hears refugee claims and welcomes resettled refugees. But it is critical to recognize how the combination of relative geographic isolation and extraterritorial bordering operate in tandem to overwhelmingly keep refugees out of earshot and out of sight.[xvi]

1. Introduction

1.1. Historic overview

Canada is a settler colonial state, and immigration has been central to its nation-building project since the early nineteenth century. Historically Canadian immigration policies demonstrated relative openness to permanent immigration, family reunification and access to citizenship, *albeit* with significant racist and discriminatory deviations. Public opinion remains comparatively favourable to immigration. Against this general landscape, however, refugees have been among the least favoured newcomers.

The modern history of Canada's refugee system begins with the country's accession to the *Refugee Convention* in 1969 – fifteen years after the Convention came into force. While provisions adopted in 1973 allowed for appeals of deportation orders for persons claiming to be *Convention* refugees, the beginning of a dedicated refugee system in Canada came into being in the 1976 *Immigration Act*.[xvii] This Act recognized refugees in Canadian law as a distinct class of migrant, and "entrenched the definition of a Convention refugee, created a refugee determination system (decisions made by the Refugee Status Advisory Committee – RSAC)…and enabled the private sponsorship of refugees."[xviii] The latter provisions on private sponsorship were dramatically launched in 1979 when Canadians responded to the Vietnamese refugee crisis by ultimately sponsoring over 70,000 people to come to Canada.[xix] The private sponsorship system has been lauded internationally and most recently was at the centre of Canada's extensive resettlement of Syrian refugees beginning in 2016. In 2018, Canada resettled more refugees than any other country.[xx]

A landmark moment for Canada's inland refugee system is the Supreme Court of Canada's 1985 decision in *Singh v. Minister of Employment and Immigration* which held that refugees are entitled to "fundamental justice" in their claims, including an oral hearing where credibility is at issue.[xxi] Following on the *Singh* decision, the *Immigration Act* was amended in 1989 to create the Immigration and Refugee Board (IRB) through which refugee claimants would be entitled to a quasi-judicial oral hearing of their claims. In 1993, the IRB issued the Guidelines on Women Refugee Claimants fearing gender-related persecution – the first such guideline on gender-based claims issued by any country in the world.[xxii] At the same time, perpetual reactionary pressure over unfounded refugee claims, long backlogs and hysteria over refugees arriving by boat led to the erosion of other

procedural rights[xxiii] and the entrenchment of interdiction measures to prevent arrival, and thereby reduce numbers of those seeking access to an oral hearing of their claim.[xxiv]

The *Immigration and Refugee Protection Act* (IRPA) came into force in 2002, replacing the former *Immigration Act*. The IRPA entrenched certain pre-removal protections against refoulement and emphasized the objectives of compliance with Canada's international human rights obligations. However, the IRPA also contains broad inadmissibility/ineligibility provisions that potentially bar refugees from accessing refugee determination or permanent residence based on political affiliation and modes of entry. In 2004, Canada implemented the *Safe Third Country Agreement* (STCA) that it had long sought with the United States. The STCA is, to a great extent, inspired by and modelled on the multilateral *Dublin Regulation* among European Union member states. Under the STCA, Canada peremptorily turns back refugees who arrive at the Canada-US border and seek refugee protection in Canada, unless they are unaccompanied minors or have relatives who fall within a class defined under the STCA. The STCA applies at land-based ports of entry. It does not apply between designated ports of entry, at inland immigration offices, or at airports. The constitutionality of the STCA was challenged for the second time in 2019. In July 2020, the Federal Court ruled that the STCA violates the Canadian Charter of Rights and Freedoms, basing its judgment primarily on the punitive use of detention by US authorities against asylum seekers returned to the United States by Canada[xxv]. The decision is presently under appeal.

The then-Conservative government overhauled Canada's inland refugee system December 2012. While finally implementing decade-old legislation creating an internal appeal mechanism (Refugee Appeal Division) the amendments contained several anti-refugee measures: It targeted claims from certain countries as presumptively unfounded, cut refugee health coverage, accelerated timelines for scheduling refugee hearings, and removed pre-deportation safeguards against *refoulement*.[xxvi] All but the last bar on pre-removal risk assessments were subsequently struck down by courts as unconstitutional and/or abandoned by the federal Liberal government after its election in 2015. The controversial Designated Countries of Origin (DCO) regime – modeled on the European Safe Country of Origin list – was discarded after two successful court challenges to its provisions. In the words of the government's press release announcing the end of the program: "The DCO policy did not fulfil its objective of

discouraging misuse of the asylum system and of processing refugee claims from these countries faster."[xxvii]

Inspired partly by Australia's brutal asylum seeker policies, the Conservative government also enacted laws that created a category of "Designated Foreign Nationals," namely groups of two or more refugee claimants suspected by the Minister of 'irregular arrival' with the aid of smugglers. Designated Foreign Nationals will be automatically detained until their refugee claim is determined. Even if refugee protection is conferred, refugees would be denied access to permanent resident status for five years, prohibited from sponsoring family members, and unable to obtain a travel document[xxviii]. The law has only been used once (by the Conservative government), and was not constitutionally challenged. It almost certainly violates the *Charter*, but it remains in IRPA[xxix]

Amidst alarming conditions for migrants in the United States post-2016, and political pressure over refugees crossing the border irregularly to avoid the application of the STCA, Canada further diminished access to a refugee hearing at the IRB in 2019. Henceforth anyone who had ever claimed protection in the United States, United Kingdom, Australia or New Zealand – the countries with whom Canada shares the *Five Eyes* intelligence agreement – would be denied access to a full refugee hearing before an independent decision tribunal, and would instead be relegated to a paper review by an immigration officer.

1.2. Main debates in the academic literature

The vast majority of academic writing in Canada shares a critical view of Canadian policies that are seen to have restricted or "securitized" refugee protection. For example, the literature contains almost unanimous critique of Canada's then Conservative government 2012 reforms to Canada's refugee system.[xxx] While the literature is wide-ranging, four areas of considerable discussion, if not outright debate, are outlined here.

First, and as discussed elsewhere, the STCA and refugee policy at the Canada-US border has been extensively analyzed in the literature.[xxxi] Predictions made at the time of the agreement that the STCA would make a large class of refugees "illegal" were proven true about fifteen years later after 2016.[xxxii] As it is the STCA itself that diverted refugee claimants into "unofficial"/ "irregular"/"illegal" terrain, many argue that the best remedy for irregular entry and its implications for the integrity of the refugee system is to abandon the Agreement.[xxxiii] Others express more concern that the refugee system, which already has nearly 100,000

refugee claimants in backlog could not survive the increase in claims if the STCA was suspended. Commentators offered policy prescriptions as wide-ranging as expediting determination of these claims, or more controversially trying to negotiate "direct-backs" with the United States where claimants remain in the US pending determination.[xxxiv]

Refugee resettlement, and especially Canada's private refugee sponsorship model, has generated considerable scholarly attention since the resettlement of Syrians in 2016. Legal scholars have addressed the legislative architecture of public and private (community) sponsorship, the extent to which its private stream supplement or diminish public commitment to resettlement, normative considerations in the selection process, the role of judicial oversight in resettlement decisions, among other dimensions of the program[xxxv]. We address resettlement in greater detail below.

A third area of significant academic work has focused on the indeterminacy that prevails in Canadian refugee determination. The work of Sean Rehaag has demonstrated this quantitatively showing significant differentials in grant rates between refugee adjudicators at the IRB, and judges hearing applications for leave for judicial review of negative refugee decisions at the Federal Court.[xxxvi] This work has recently been complemented by innovative work by Hilary Evans Cameron to theorize the issues at play in credibility assessment, and the divergent assumptions of different Canadian judges over who bears the burden of the uncertainty that so often prevails in fact-finding in the refugee context.[xxxvii] Evans Cameron persuasively shows that refugee law's fact-finding methodology does little to deter decision-makers from making the 'wrong' mistake, namely rejecting well-founded claims (as opposed to mistakenly accepting an unfounded claim). She argues for a reconceptualization of fact-finding that takes seriously the principle of resolving doubt in a claimant's favour.

Finally, there is a rich literature around the law of exclusion and inadmissibility determinations in Canada. Many argue that Canada's approach to inadmissibility and exclusion for criminality is out of step with international standards, and that the inadmissibility for "membership" in a broad range of political organizations and governments in section 34 of the IRPA adopts a "guilt by association" approach to the denial of refugee status that is blatantly in breach of Canada's obligations under the *Convention*.[xxxviii] Under section 34(1)(f), refugees who would not meet the threshold of complicity for exclusion under Article 1F(a) are routinely excluded from protection based solely on political support for local

self-determination movements, and with no personal connection to any act of violence. Recent work has also centred the disproportionate impact of Canada's approach to Article 1F(b) exclusion on female refugee claimants who face potential exclusion for "child abduction" in fleeing domestic violence with their children.[xxxix]

1.3 Latest policy developments

In this section we will highlight three issues: a policy issue related to containment, a legal issue related to containment, and finally a policy development relevant to mobility.

First, in containment, the latest major policy development is, as mentioned above, a new refugee ineligibility for those who have claimed protection in one of Canada' *Five Eyes* partners, including most saliently the United States. The roots of this new policy stem from the STCA, and the unofficial border crossing at Roxham Road in Quebec that came into being in response to the large number of refugees entering Canada from the United States in 2016. As refugees fleeing the US entered Canada at sometimes dangerous unofficial crossings to avoid the application of the STCA, Roxham Road was set up as a kind of harm reduction measure to allow for the orderly processing of these refugee claims. Despite many Canadians revulsion at the treatment of migrants and refugees in the United States, the large number of refugees fleeing that treatment by entering Canada "irregularly" led Roxham Road to become a kind of symbol for Canada's loss of control of its borders.[xl] With an election coming in October 2019, the Liberal government introduced an ineligibility provision barring access to the normal refugee system for anyone who had ever "made a claim" in the United States, or any of the other *Five Eyes* nations. The rationale for choosing these countries does not seem to have been primarily based on quality of protection mechanisms in these states, but rather on the existence of the *Five Eyes* information sharing agreement to confirm that a prior claim had been made. By restricting the ineligibility to claims in *Five Eyes* countries, the government likely sought to learn from the logistical problems of verifying presence in another country that plagued the *Dublin Agreement/Regulation*. Using this intelligence sharing, the government of Canada has found a means to restrict access to its refugee system to a degree it could not in the physical world given the easy permeability of Canada's long and unguarded border with the United States. The impact of the new law is that affected claimants are denied the normal oral hearing and the safeguard of a full-fact based appeal at the IRB. Instead, they

will be eligible only for a pre-removal risk assessment (PRRA), a process that is not built to assess credibility and where there are long-standing concerns about the expertise and independence of its decision-makers.[xli] In the event of a negative decision, affected claimants face deportation prior to any form of review. The PRRA process which was implemented for the narrow role of assessing new risks immediately prior to deportation is undergoing a kind of "mission creep" as it used both here, as well as for claimants found excluded or inadmissible, as an alternative refugee process for claimants seen as less deserving of access to protection. The majority of claimants this law effects will be those whose refugee claims were refused or abandoned in the United States. This is a concern as the STCA is presently being constitutionally challenged in Federal Court precisely because of the large numbers of claimants – including those fearing gender-based and gang violence based claims - who face barriers to protection in the United States due to that country's restrictive interpretation of nexus to the *Convention*, the scope of "particular social group", and state protection.[xlii] As the Canada-US border has been closed to irregular arrivals due to COVID-19, the policy impacts and legality of this new law remains to be seen.

In the background of Canada's various policy measures to keep refugee claimants in the United States is the contested legality of the primary tool it uses to do so: the STCA. In 2007, the Federal Court found the effects of the agreement to unconstitutionally violate refugees' rights to liberty, security of the person, and equality under the Canadian Charter of Rights and Freedoms (*Charter*).[xliii] A year later, that decision was overturned on appeal based on a controversial holding that the constitutional challenge was not properly before the Court.[xliv] With anti-refugee rhetoric and policy building in the United States after the election of Donald Trump, the same public interest organizations that had brought the previous case sought to challenge the law once more. In 2017, the Canadian Council for Refugees, Canadian Council of Churches and Amnesty International, along with refugee claimants from El Salvador, Ethiopia and Syria, launched a new constitutional challenge to the agreement.[xlv]

The challenge focused on various long-standing flaws in the US asylum system that had only grown worse under President Trump. Unlike the EU *Dublin Regulation,* the STCA is a bilateral agreement between two states that lack EU-style common standards for refugee determination and process. This meant that, unlike the situation in the EU, parties to the Dublin Regulation could not be liable for non-compliance with those common standards[xlvi]. Thus, the Canadian challengers of the STCA focused their arguments on the incompatibility of

certain features of US law with the content given to the *Refugee Convention's* non-*refoulement* obligations by the UNHCR, international courts, and reputablescholars. The US laws and policies at issue included the bar on asylum for refugees who do not claim within their first year in the country; widespread and long-term detention of refugee claimants which obstructs their ability to make out their refugee claims; and restrictive and exclusionary interpretations of the *Refugee Convention's* refugee definition that limit protection to women fearing gender-based violence. The applicants argued that returning refugee claimants conditions arbitrarily denied *Charter* protected rights to liberty and security in light of the evidence that the United States was not a partner in carrying out its obligations under the *Convention*. It was further argued that returning refugees who fear gender-based violence claimants to the US discriminates against women refugee claimants. Finally, the applicants argued, that in light of the severity and range of US practices that violate the *Convention*, the Cabinet designation of the US as a safe third country was an unreasonable exercise of executive power.[xlvii]

In August 2019, the Federal Court again struck down the STCA as unconstitutional, suspending the effect of its decision to allow time for the government to respond.[xlviii] The Federal Court narrowed its attention to to the reception conditions for refugees returned to the US, not unlike the European Court of Human Right's focus on Greek detention conditions in in its 2011 decision on the *Dublin Regulation, M.S.S. v. Belgium and Greece.*[xlix] The Court accepted the evidence that refugee claimant turned back from Canada were detained in the United States in inhumane and alarming conditions that also interfered with their ability to advance their refugee claims. In the Court's view, this was an arbitrary and disproportionate deprivation of liberty and security, and Canada violated its own constitutional obligations toward refugee claimants by deflecting them into US detention. The remaining issues regarding the US asylum system beyond detention were not address by the Court. The effect of the judgment has been stayed by the Federal Court of Appeal pending the government of Canada's appeal. The appeal is scheduled to be heard eearly in 2021.

Finally, in the realm of mobility, Canada's newest resettlement mechanism blending private and public contribution has been the subject of recent debate as more evidence about its operation becomes available. Introduced in 2013 and conceived of as a kind of middle-ground between private sponsorship and government assisted refugees, the Blended Visa Office Referral (BVOR) program

matches private sponsors with UNHCR-referred refugees selected by the government from either targeted regions or groups and splits the cost of resettlement for one year between government and sponsor.[l] The BVOR program seeks to harness the energy and settlement advantages that come from private sponsorship and aim it at vulnerable persons in protracted refugee situations who have no relational connection to Canada. It met resistance from the private sponsorship community because it deprived sponsorship groups of the ability to nominate the person to be sponsored. However, the BVOR became a widely used tool in late 2015 and early 2016 in response to the Syrian refugee crisis.[li] It allowed for quicker processing and lesser financial burdens for Canadians who wanted to assist but did not have any particular refugee family in mind. The program also allows for the sponsorship of families with higher needs given that the economic burden is shared. However, outside of a moment like that seen towards Syrian refugees in 2015-2016, the interest in sponsors in pursuing the BVOR program has been limited in comparison to other routes to private sponsorship.[lii] As sponsorship is often driven by refugee communities settled in Canada who want to free family members from the same persecution they have fled, the ability to choose who is being sponsored is highly-valued.[liii] While efforts to direct sponsor energy to refugees without a relationship to Canada are valuable, it appears more incentive will have to be offered to choose the BVOR route over the other paths to private sponsorship.

2. Asylum and refugee statistics

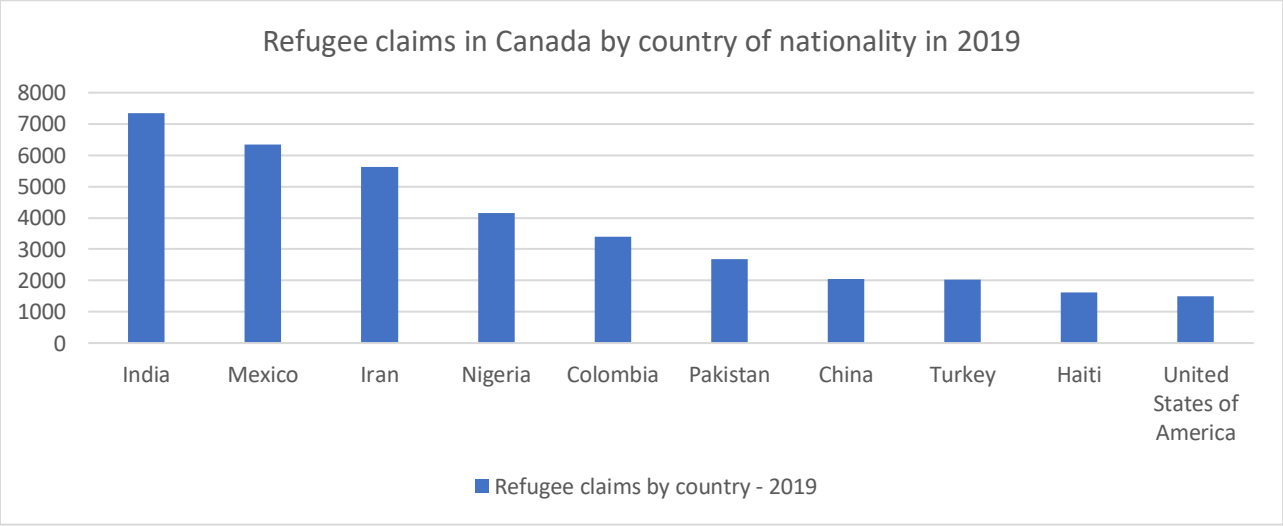
- A total of 64,045 refugee claims were made in Canada in 2019.[liv] This is a record number of inland refugee claims which jumped from 23,870 in 2016, to 50,390 in 2017 and 55,040 in 2018. In 2019, 8,120 claims were made at airports, 20,485 were made at land ports of entry, 25 claims were made at marine ports of entry, and 35,410 were made inland, i.e at offices inside Canada, primarily from those who had come to Canada on valid entry visas.[lv] Of the total of claims at land ports of entry,16,137 refugee claims were made "irregularly", i.e at unofficial border crossings at the Canada-US border.[lvi] The gender-breakdown of arriving refugee claimants was approximately 55 percent male and 45 percent female.[lvii]

- In 2019, 26,417 persons were accepted as Convention Refugees by the Immigration and Refugee Board and 30,070 were resettled through the overseas resettlement program.[lviii] Both successful asylum seeker and

resettled refugee totals represent a significant increase over the 2010-2015 averages.[lix] The recognition rate of the Refugee Protection Division in 2019 was 59% if one counts abandoned or withdrawn claims as refusals; if one only compares accepted and refused claims, the recognition rate rises to 65 percent.[lx]

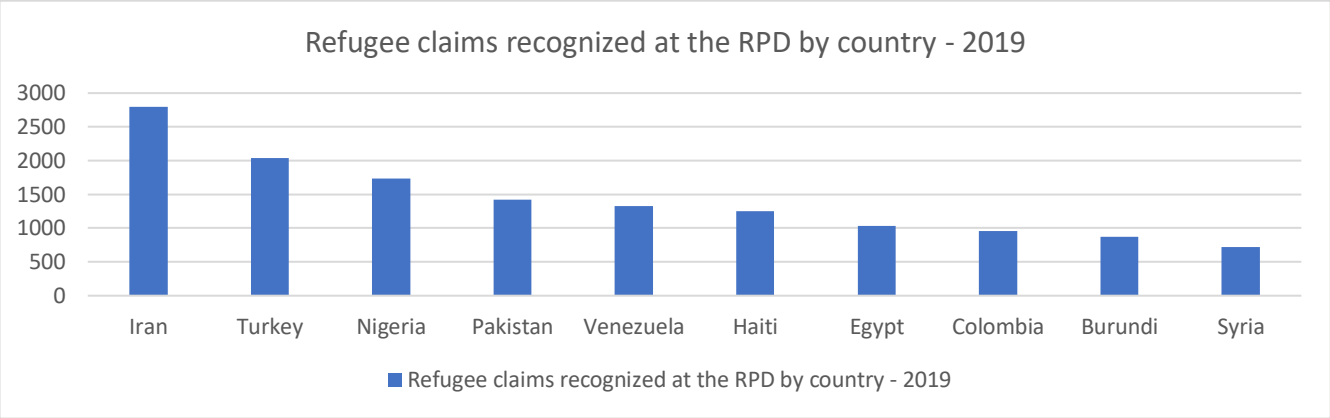
- As of 31 December 2019, there were 87,343 refugee claimants awaiting a hearing of their claims at the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB)[lxi] and 9,700 claimants awaiting a determination of their appeal at the Refugee Appeal Division (RAD) of the IRB.[lxii] This combines to a total of 97,043 refugee claimants whose claim is pending before the Immigration and Refugee Board.[lxiii]

- The source countries with the highest number of refugee claims in Canada in 2019 were: 1) India – 7,350 claims (2) Mexico – 6,345 claims 3) Iran – 5,620 claims 4) Nigeria – 4, 145 claims 5) Colombia – 3,395 claims; 6) Pakistan – 2,680 claims; 7) China – 2,045 claims; 8) Turkey – 2,025 claims; 9) Haiti – 1,625 claims; 10) United States of America – 1,500 claims.[lxivlxv]

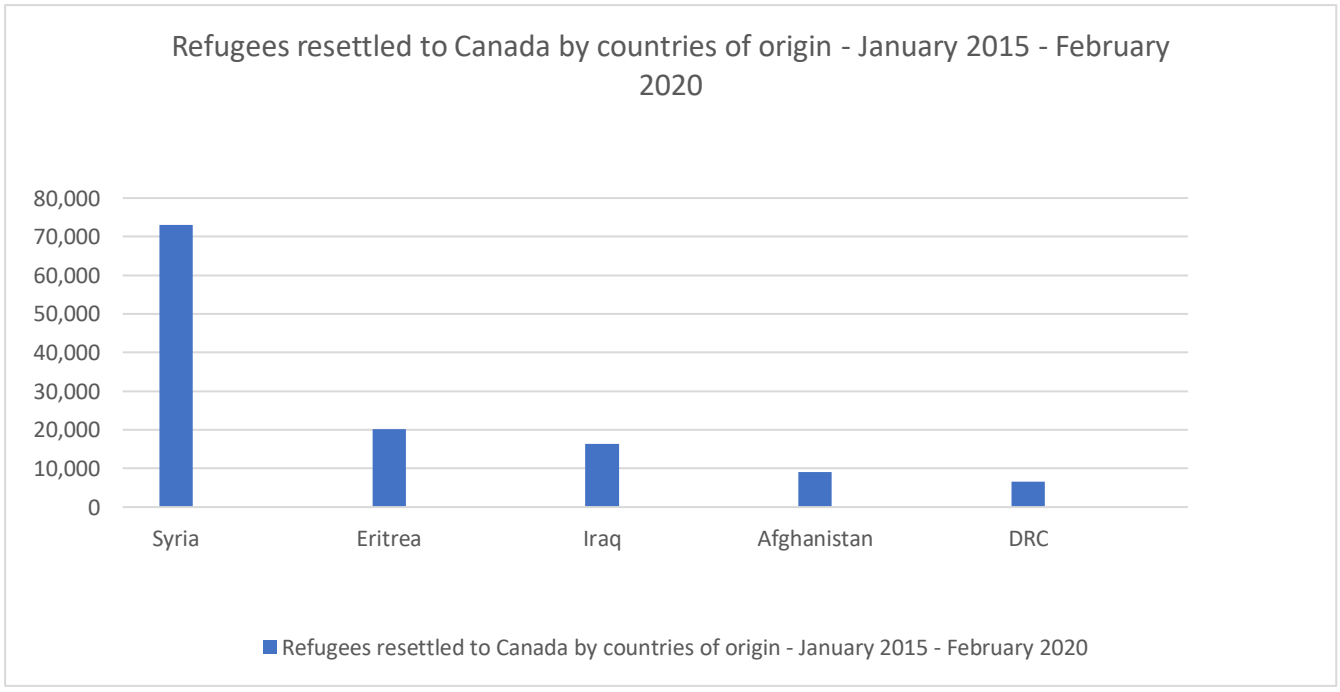


- The source countries with the highest number of recognized refugees in Canada in 2019 were: 1) Iran – 2,800 claims accepted by the IRB; 2) Turkey – 2,043 claims accepted by the IRB; 3) Nigeria – 1,735 claims accepted by the IRB; 4) Pakistan – 1,425 claims accepted by the IRB; 5) Venezuela – 1,330 claims accepted by the IRB 6) Haiti – 1,252 claims accepted by the IRB; 7) Egypt – 1,032 claims accepted by the IRB; 8) Colombia – 957 claims accepted

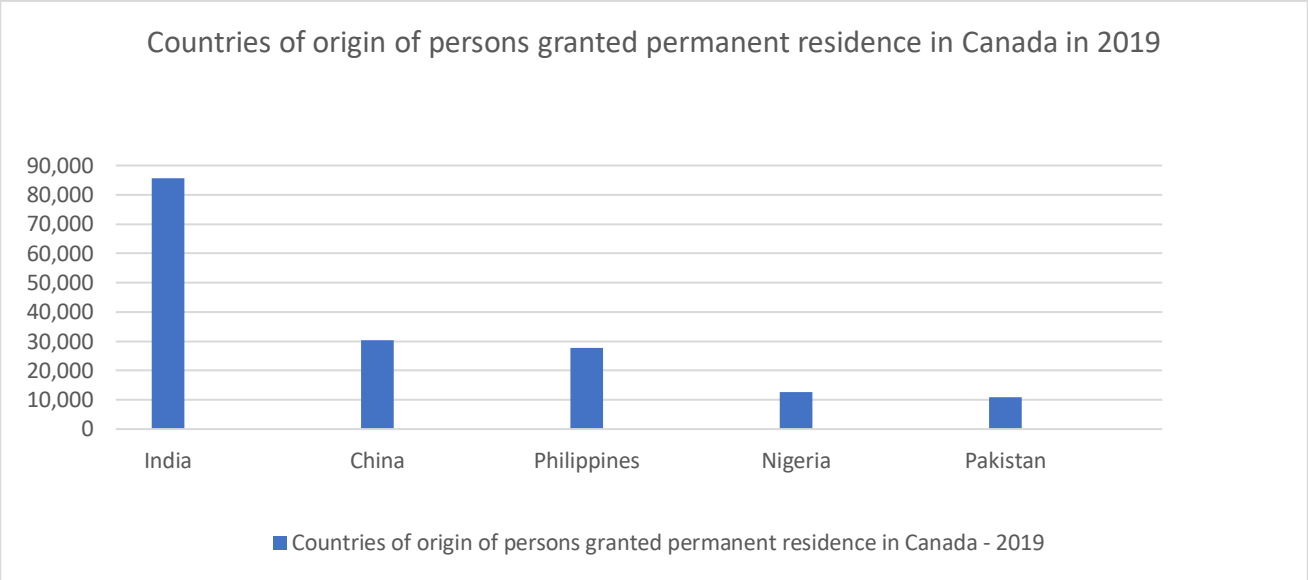
by the IRB; 9) Burundi – 872 claims accepted by the IRB; 10) Syria – 719 claims accepted by the IRB.[lxvi]



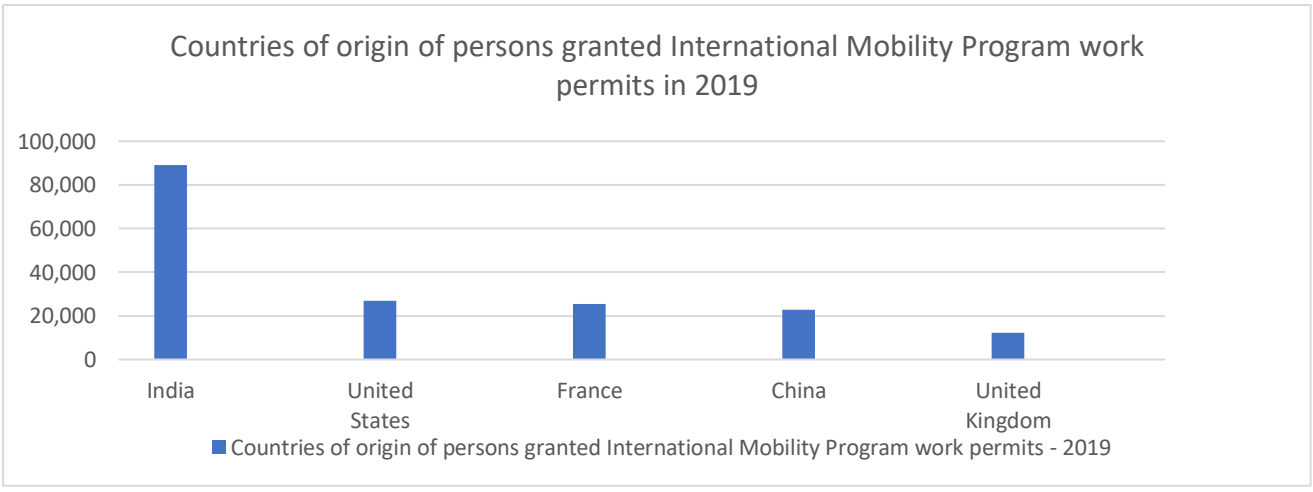
- From January 2015-February 2020, the top five countries of origin for refugees resettled to Canada were: 1) Syria – 73,070 persons; 2) Eritrea – 20, 250 persons; 3) Iraq – 16, 350 persons; 4) Afghanistan – 9,005 persons; 5) Democratic Republic of Congo – 6, 520.[lxvii]



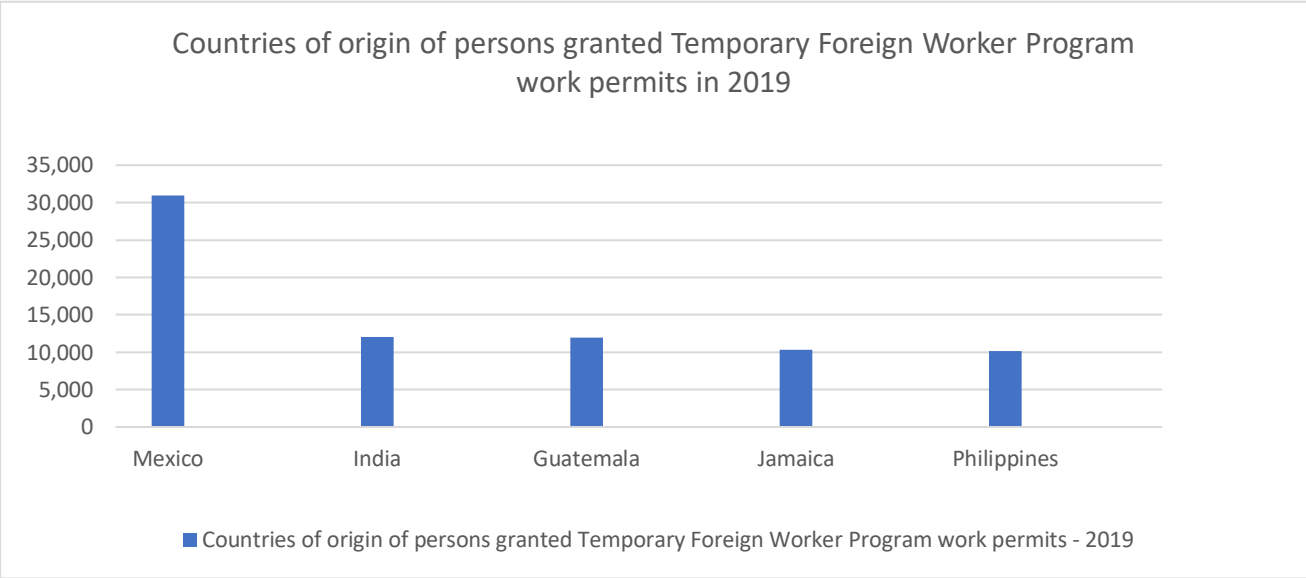
- Of the 341,190 persons granted permanent residence in Canada in 2019, the main nationalities were: 1) India – 85, 596 persons; 2) China – 30, 245 persons; 3) Philippines – 27, 820 persons; 4) Nigeria – 12, 600 persons; 5) Pakistan – 10, 795 persons.[lxviii]



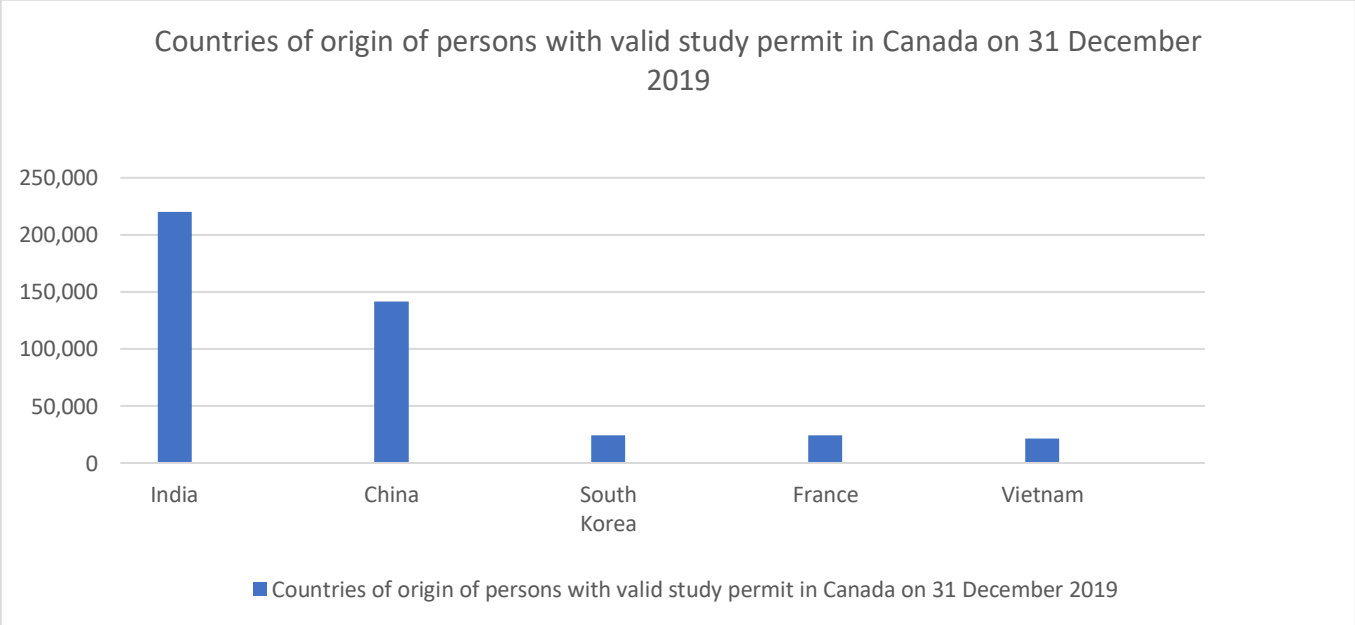
- Of the 307, 265 International Mobility Program[lxix] work permits that became effective in 2019, the main nationalities of permit holders were: 1) India – 89, 095 persons; 2) United States – 26, 910 persons; 3) France – 25,445 persons; 4) China – 22, 730 persons; 5) United Kingdom – 12, 275 persons.[lxx]



- Of the 98, 390 Temporary Foreign Worker Program[1] work permits that became effective in 2019, the main nationalities of permit holders were: 1) Mexico – 30, 975 persons; 2) India – 12,045 persons; 3) Guatemala – 11,945 persons; 4) Jamaica – 10, 325 persons; 5) Philippines – 10, 120 persons.[lxxi]



- Of the 642, 480 persons who had a valid study permit for Canada on 31 December 2019, the main nationalities were: 1) India – 219, 855 persons; 2) China – 141,400 persons; 3) South Korea – 24,180 persons; 4) France – 24, 045 persons; 5) Vietnam – 21, 595 persons.[lxxii]



3. Asylum governance instruments

Asylum Regime

Owing to Canada's remoteness from refugees' regions of origin, and the fact that its only land border is with the United States, its extraterritorial deflection measures are not as visibly violent as deterrent tactics employed by other states. But they are effective.

Citizens of states considered to be 'refugee producing' generally require visitor visas that are extremely difficult to obtain. Travellers from visa-exempt states must still obtain an electronic travel authorization in advance of travel. Refugees must often resort to using smugglers and obtaining false documents in order to reach a country of asylum. Canada posts immigration officers at major airports abroad to scrutinize travel documents prior to boarding. It also trains private airline officials to do the same. Those with travel documents deemed suspicious will be peremptorily denied boarding. Until 2017, the Canada-US Safe Third Country Agreement proved fairly effective at preventing the entry of asylum seekers who passed through the United States, which otherwise presents most feasible route to reach Canada. Although the STCA is formally reciprocal, few asylum seekers need to pass through Canada in order to reach the United States, and so its primary purpose and effect is to reduce the number of asylum seekers able to claim protection in Canada.

For those asylum seekers who do enter Canada, an eligibility screening process denies access to a full refugee determination process for those considered to pose a risk of criminality or national security, or who have made asylum claims in the US, UK, Australia or New Zealand. Relatively few asylum seekers are detained in Canada; by the same token, there are no legislated limits on the length of detention[lxxiii]. Eligible asylum seekers may access basic public health care and a work permit, and are entitled to refugee determination before an independent tribunal (Refugee Protection Division of the Immigration and Refugee Board). Asylum seekers receive an oral hearing. Limited legal aid is available in Ontario, British Columbia and Quebec, the top three provinces for refugee determination. Most, but not all, asylum seekers whose claims are refused by the RPD may appeal to the Refugee Appeal Division of the IRB. Judicial review by the Federal Court is available by leave of the court. If a refused asylum seeker is not removed from Canada within a year of the last decision on

their refugee claim, they may be eligible for a Pre-Removal Risk Assessment (PRRA), which assesses whether, following the passage of at least a year, the risk faced by refugee claimant has changed. After a year, a refused refugee claimant may also make a humanitarian and compassionate (H&C) application to remain in Canada based on factors related to their life in Canada and the hardship or difficulties to themselves or their children (but not including persecution) if required to return.

This **flow-chart** provides a picture of how the refugee process works for claimants found eligible to have their claims heard by the RPD. For ineligible claimants – who are excluded from the normal system for reasons, such as serious criminality, membership in a group that raises national security concerns, and the *Five Eyes* ineligibility discussed above[lxxiv] – the PRRA is the only available assessment of their risk prior to removal.

Resettlement Regime

Canada's modern resettlement regime was legislated into existence in the *Immigration Act*, which came into force in 1978. It linked to Canada's history as a settler society in two ways: first, long before the figure of the refugee formally existed in law, many immigrants to the New World were driven by extreme hardship and persecution. Also, in a few instances early in the twentieth century, and again after WWII, both the government and diasporic communities 'sponsored' refugees to resettle in Canada.

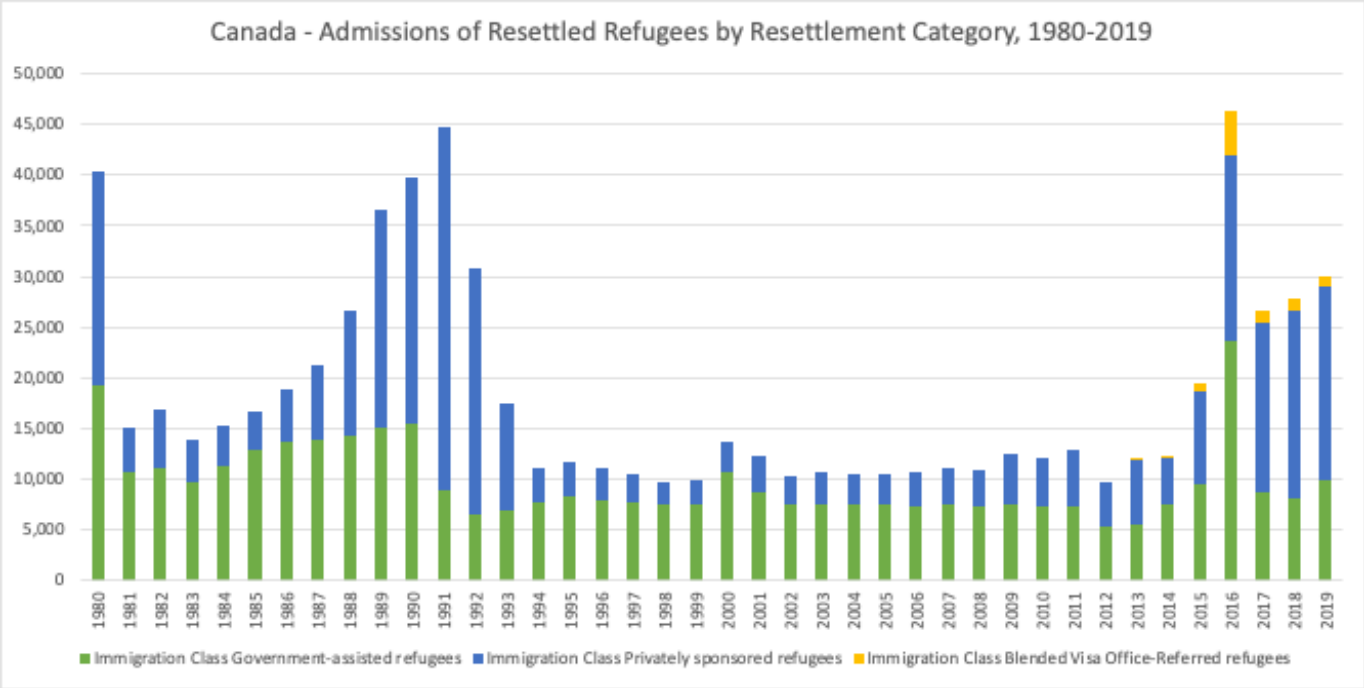
The 1978 *Immigration Act* created two classes of resettled refugees. The first category was the 'government assisted refugee' (GAR), and the second was privately sponsored refugee (PSR). Government assisted refugees (GARs) are selected by the government (usually on the basis of referrals from the UNHCR or allied organizations). Selected refugees are screened by immigration officials for health, criminality and security and then flown to Canada, although they must repay the cost of travel as a transportation loan. Government assisted refugees are granted permanent resident status upon arrival, provided with twelve months of financial support at local social assistance rates, and aided in integration by local settlement agencies. They also receive public health care, education, and language training.

Private (or community) sponsorship operates in parallel to the public model. These refugees are nominated by sponsors in Canada (if they know or know of

refugees abroad), or selected by government and then proposed to sponsors. They must still meet the refugee definition, and are also be screened by immigration officials for health, criminality and security. Instead of receiving social assistance, they are supported for one year by a sponsorship group that takes responsibility for aiding in the settlement process (securing housing, schooling, medical, dental and mental health care, orientation, employment preparation, emotional and social support). Like GARs, privately sponsored refugees access permanent resident status upon arrival, and are eligible for public health care, education and language training. In 2013, the government introduced a third category, known as the Blended Visa Office Referral (BVOR) model. Refugees are selected for resettlement by the government, and then matched with sponsorship groups. The government and the sponsorship share equally the cost of financial support for the first year. The government establishes annual limits on the maximum number of refugees who can be resettled in each category.

At the end of the first twelve months, in what has become known as 'month 13', resettled refugees may or may not attain financial independence. If not, they are eligible for ordinary social assistance (income support). Although the financial commitment of private sponsors lasts a year, the personal relationship between sponsors and sponsored refugees may evolve and endure.

The roots of private refugee sponsorship go back over a century. They are embedded in the history of Canada as a settler society – a 'country of immigration' -- and the role of charitable settlement societies organized along ethnic, religious, and national lines. Faith-based and ethnic organizations remain pillars of the contemporary private sponsorship system. Over 120 organizations across Canada hold framework sponsorship agreements with the government that ensure stable, ongoing sponsorship from year to year. Individual sponsorship groups may come together and seek to sponsor under the auspices of one of these sponsorship agreement holders, or they may engage directly with the ministry of citizenship and immigration. The Quebec system of community sponsorship is similar, though not identical.



Source: Immigration, Refugees and Citizenship Canada, October 2015 and 31 May 2020.

As the table indicates, annual resettlement numbers have fluctuated significantly over the four decades since the inception of the contemporary resettlement system. The proportion of government assisted versus privately sponsored refugees has also fluctuated. During 'peak' resettlement periods, the number of privately sponsored refugees matched or exceeded government assisted refugees, but otherwise did not. At the outset of the Syrian crisis, the then-Conservative government suppressed resettlement from middle-east, and maintained that position even after the death of Alan Kurdi galvanized public opinion. The Liberal contenders promised to resettle 25,000 government-assisted Syrian refugees in a matter of months if elected. After the Liberal victory, there was a dramatic surge of interest in refugee sponsorship from first-time sponsors.

Refugee resettlement, and private/community sponsorship in particular, raise several normative and policy issues, and many are now the source of multi-disciplinary scholarly inquiry. An important distinction between refugee resettlement and asylum regimes is that the former lies entirely within the domain of sovereign discretion. States have no legal obligation to resettle refugees, and resettlement does not disturb the view that states ought to enjoy unfettered authority to determine whether, how many, and which non-citizens

to admit. Asylum regimes flow from states' international legal obligations under the *UN Refugee Convention*, and although ratification of international instruments is also an exercise of sovereignty, the spontaneous arrival of asylum seekers and their claims for protection are frequently derided in public debate as a derogation of state sovereignty. Discursively, this may manifest in vaunting resettled refugees as 'genuine' or 'deserving' in contrast to 'queue-jumping' or 'bogus' asylum seekers, raising concerns about the risk of political trade-offs between resettlement and asylum.

Numbers of refugees resettled to Canada, even at peak periods, are always miniscule in comparison to global need, and to the number of refugees hosted by states of first asylum of the Global South. This in turn generates normative questions about the cost of resettlement, and whether the money spent would go further and benefit more refugees as aid in countries of first asylum.

The uniqueness of Canada's model of private sponsorship, and its relationship to the public model attracts interest in Canada and elsewhere. One of the main concerns about a private model is that it downloads or privatizes what should be a public responsibility to resettle refugees, thereby replacing a public commitment with private charity. From the early 1980s onwards, individuals and organizations active in private sponsorship (especially sponsorship agreement holders) were alert to this risk, and insisted on a principle they dubbed 'additionality.' The term denoted the idea that private sponsorship should only ever be regarded as a supplement to, rather than a replacement for, publicly funded resettlement. This is, of course not a principle that is amenable to testing, because the government can always increase intake of government assisted refugees; the government also sets a cap on privately sponsored refugees, but the number of willing sponsors may fall below (though that rarely happens) or exceed the cap.

The label 'private' also overstates the extent to which the program is divorced from the state. It is probably more accurate to describe it as a 'public/private partnership.' The state still plays an active role in screening and transporting refugees to Canada. Privately sponsored refugees access public goods (health care, education) on the same terms as all permanent residents, as well as language training and some other settlement services. The aims and objectives of private sponsorship are framed by the state in terms of economic self-sufficiency and social integration. And after the expiry of the twelve-month sponsorship, privately sponsored refugees may qualify for state income support.

Some proponents of private sponsorship assert that private sponsorship is a superior model because privately sponsored refugees fare better than government assisted refugees, thanks to the support, dedication, and social capital expended on them by sponsors. Following the resettlement of over 40,000 mainly Syrian refugees in 2016 (and another 80,000 in 2017-2019), interest in testing the hypothesis increased. A government study released in early 2020 examined the economic attainments of resettled refugees from 1980-2009. The authors concluded that "PSRs had higher employment rates and earnings than GARs in the initial years after arrival, even after taking into account differences in education, official language ability, and other observed socio-demographic characteristics, but these differences diminished over time with GARs steadily catching up."[lxxv] The study also concluded that "the employment and earnings advantage of private sponsorship compared with government assistance was greater among refugees with less education than among highly educated refugees," especially for female PSRs without a high school education.[lxxvi] Evidence regarding outcomes for Syrians resettled in 2015-16 is still preliminary.[lxxvii]

The evolution of resettlement over decades has revealed a consequence that was both unanticipated and unsurprising. It is called the 'echo effect.' Once resettled refugees stabilize their lives in Canada, they often prioritize reuniting with extended kin left behind. They may approach prospective private sponsors and ask the sponsorship group to sponsor relatives still in the region. Although all refugees must meet threshold criteria to qualify for resettlement, the ability of private sponsors to nominate refugees for resettlement led to a disproportionate representation of relatives of previously resettled refugees in the pool of privately sponsored refugees. Over the years, the consequence was that a significant number of privately sponsored refugees were selected on the basis of kinship with those already in Canada, which in turn raised normative questions about the priorities that ought to govern selection of refugees for resettlement. This 'echo effect' was temporarily disrupted by the Syrian refugee resettlement, because the numbers were relatively large and relatively few had existing family in Canada. But evidence of the resumption of the echo effect is already emerging, as newcomers who were resettled after 2015 now seek reunification with extended family left behind.

3.1 Canada and the Global Compact on Refugees

Under the mantle of the GCR, Canada has pledged to help share and build capacity for other states to establish private refugee sponsorship programs. Along with the UNHCR and other civil society organizations, Canada launched the Global Refugee Sponsorship Initiative to advise on private sponsorship internationally.[lxxviii] Canada has also collaborated with the UNHCR, NGOs in Jordan and Lebanon and the governments of Jordan, Lebanon, Australia and the UK to launch Talent Beyond Boundaries (TBB).[lxxix] The TBB program aims to collect data on the professional background and credentials of refugee populations and work to remove the barriers that highly trained refugees in the professional-managerial class face in accessing existing economic immigration pathways. Finally, Canada is also providing further funding to the World University Service Canada (WUSC) to expand educational pathways for refugees to come to Canada to study.[lxxx] The WUSC's Student Refugee Program, launched in 1978, has resettled and supported 130 refugees annually. This program matches refugee students abroad who are recognized by UNHCR with WUSC local committees at post-secondary institutions in Canada who take on the costs of transition and settlement for the first year in Canada.[lxxxi] Finally, Canada has also pledged to bring refugee voices to the table throughout its GCR initiatives, including in its delegations to international forums and summits under the GCR mantle.[lxxxii]

Canada has also pledged to continue asylum capacity building projects in Mexico, Costa Rica, Panama and Belize, states where refugees bound for the United States and Canada may otherwise pass *en route*. In terms of resettlement, Canada has pledged to 600 refugees from Libya by 31 December 2020 and is on track to meet its pledge to resettle 10,000 UNHCR referred refugees from the Middle East and 10,000 refugees from Africa between 2018-2020. More generally, Canada pledged that it will be producing and announcing new multi-year resettlement commitments beginning in 2021. Canada will also introduce a dedicated program aimed at human rights advocates at risk, with an annual target of resettling up to 250 individuals.[lxxxiii]

4. Governance actors

The leading governance actors in Canada are the Ministry of Immigration, Refugees and Citizenship Canada (IRCC), which administers the refugee system, and the Canada Border Services Agency (CBSA), which is responsible for

immigration enforcement. IRCC makes refugee policy through its Refugee Affairs Branch, sets admissions caps for the overseas refugee program, and administers resettlement through its embassies abroad. IRCC also sets and administers visa policies and employs "migration integrity" officers at airports to prevent working class people from refugee-producing countries from reaching Canada. Under umbrella The Immigration and Refugee Board (IRB) is an independent tribunal responsible for first-instance refugee determinations and appeals, inadmissibility hearings and detention reviews. It operates under the umbrella of IRCC. The majority of adjudicators at the IRB are public servants, with a small number of political appointees employed at the Refugee Appeal Division (RAD) of the IRB. IRCC also employs inland immigration officers who decide pre-removal risk assessments and applications for permanent residence on humanitarian and compassionate considerations for foreign nationals in general, and for refugees who were found either ineligible to be referred to the IRB or denied protection at the IRB. Finally when refugee claims are made inland – i.e not at a land border or airport – the determination of eligibility to make a refugee claim is decided by IRCC.

CBSA, an agency under the Ministry of Public Safety, has a defined role at the beginning, middle and end of the refugee process. First, CBSA conducts the eligibility interview for refugee claims made at ports of entry and conducts an upfront security screening. At this stage, they also may refer individuals for whom they believe security issues are raised for inadmissibility hearings at the Immigration Division of the IRB which will determine if their refugee claims will even be heard. After the referral to either the Refugee Protection Division (in normal course) or to the Immigration Division (in cases of security concerns) CBSA continues to play a role. First, CBSA Hearings Officers represent the Minister of Public Safety in ministerial interventions at the Refugee Protection Division and Refugee Appeal Division of the IRB when they feel there are particular concerns about the credibility of the claim or exclusion issues under Articles 1Fa, 1Fb, 1Fc, or 1Fe of the *Refugee Convention*. Their intervention turns the otherwise inquisitorial refugee hearing at the IRB into an adversarial process and the CBSA has rights to disclosure, to appear at the hearing, and to make submissions. Second, CBSA has a built-in adversarial role representing the Minister of Public Safety at detention review hearings and inadmissibility matters at the Immigration Division of the IRB. In detention reviews, CBSA argues that individuals should remain in detention, and supervise conditions of release, while in inadmissibility cases CBSA officers argue that based on public safety or

national security concerns a refugee should not have be admissible to have their claim heard at the Refugee Protection Division.[lxxxiv] Finally, CBSA officers arrest and deport refugee claimants whose claims have been rejected and have become subject to an enforceable removal order. In this role enforcing deportation, CBSA officers have a narrow discretion to defer removal and sent the matter to IRCC for a PRRA when there are serious risks in the country of citizenship that have never been assessed.

The operation of Canada's refugee system is subject to judicial supervision by the Federal Court of Canada. Controversially, immigration and refugee matters are subject to a leave requirement where a judge must decide a "fairly arguable case" has been raised before an application for judicial review can even be heard. The Federal Court accepts less than 20% of applications for leave to seek judicial review. Even so, immigration cases (including asylum) constitute about 65% of the caseload of the Federal Court. Commentators and advocates have long raised concern about the inconsistent application of this leave requirement which frequently and without reasons deny refugees access to courts and the right to a remedy.[lxxxv] The IRCC and CBSA are represented in Federal Court by lawyers of the Federal Department of Justice who defend the reasonableness and fairness of state action in the immigration and refugee context.

The UNHCR play a central role in resettlement, both in referring cases for the Blended Visa Office Referral (BVOR) Program and in determining and granting refugee recognition, which is a prerequisite for resettlement to Canada in many streams. In the inland system, the UNHCR has a legal right to observe and monitor hearings at all divisions of the IRB and make submissions at the Refugee Appeal Division.[lxxxvi] The UNHCR also makes submissions to parliamentary committees on new refugee legislation.

A wide variety of civil society organizations take part in the refugee system as sponsorship agreement holders (SAH) in private sponsorship and in refugee settlement services assisting newcomers to integrate. Many of these organizations are institutional members of the Canadian Council for Refugees (CCR) which has been a long-standing and vibrant advocate for refugee rights in Canada. The CCR holds regular consultations amongst stakeholders in the system and raises these issues in consultations with IRCC and CBSA. The CCR also conducts data-collection and public-facing work advocacy dispelling myths about Canada's refugee system. Alongside the CCR, a younger organization that has played an active role in refugee law and policy in recent years is the

Canadian Association of Refugee Lawyers (CARL). CARL – a coalition of refugee lawyers, students and academics - has brought successful constitutional litigation in the courts and consulted with, lobbied and advocated before Parliament on issues impacting on the rights of refugees in Canada. Countless other civil society actors play a role, and these include grassroots activist groups like No One is Illegal and End Immigration Detention Now, broad-based organizations like Canadian Civil Liberties Association, British Columbia Civil Liberties Association and Amnesty International, various ethno-specific and faith-based groups, and public policy think tanks such as the Institute for Research on Public Policy. However, the CCR and CARL are the non-government organizations most directly and consistently focused on influencing Canadian refugee law and policy. At present, there is no anti-migrant organization in Canada with a comparable level of organization, credibility and durability, although individuals, conservative politicians and right-wing media outlets vocally oppose asylum seekers and refugees and promote policies that would reduce access and protection.

5. Conclusions

Canadian refugee policy is like a person born into a series of privileged circumstances that have set it up for success, where success is measured by how well it prevents asylum seekers from reaching the door and how it treats those who do. Surrounded by oceans and bordered only by the United States, the government of Canada has an exceptional level of control over who can access the inland refugee system. Along with geography, Canada is a resource-rich settler society with a relatively small population for a country its size, and no dominant national identity. In this context, notable innovations like the world's only long-standing private refugee sponsorship program have flourished, occasionally with broad public engagement. Canada is now in a position through its Global Refugee Sponsorship Initiative to help export this model all over the world. Further, Canada's resettlement numbers are at or near the top of all states (depending on fluctuating US commitments), and its inland system, including a quasi-judicial oral hearing bound by progressive guidelines on the interpretation of the refugee definition, has been called a "model to be emulated" by the UNHCR.[lxxxvii]

But when one considers Canada's multiple advantages, its record is more impressive relative to other states than in absolute terms. In other words, Canada looks good because other states behave even more poorly. Canada has

pioneered many of the 'remote control' techniques of preventing potential asylum seekers from reaching state territory. It has also adopted and advanced containment measures from Europe and Australia, despite far lower numbers of asylum seekers and far less political pressure to do so.[lxxxviii]

The moral and political failures of the Canada-US *Safe Third Country Agreement* is also a model to be studied, but a cautionary one. As predicted from the outset, theSTCA has taken refugee claims that would have otherwise been processed in a legal and orderly fashion at the border in accordance with the *Refugee Convention,* and pushed them underground, providing fuel for a moral panic about unchecked and 'illegal entry' at unofficial border crossings. These entries are then held up as evidence of disorder and inundation. A law denying appeal rights to those who eligible to claim under public policy exemptions written into the STCA further incentivizes "irregular" entry as a rational choice for an asylum seeker at Canada's border. Now, the law deprives all asylum seekers who have claimed refugee status in the United States (or another Five Eyes country) of the normal safeguards against *refoulement*, essentially because they failed to clear the formidable hurdles erected by Canada that make it virtually impossible to reach Canada directly and legally. The Canadian government took advantage of the COVID-19 pandemic to designate Roxham Road, the "official-unofficial" crossing for those fleeing the United States as a "port of entry" for purposes of the STCA. This allows Canadian border officials to push refugee claimants over the border and back into the US.[lxxxix] If this persists after the pandemic's border measures are lifted, a predictable turn of events will ensue. More refugees who cannot find protection in the US will be forced to take more perilous covert routes to be heard in Canada, sparking a job-creation program for smugglers, leading to more preventable injury and death, and fueling more anti-migrant sentiment against 'illegal' border crossers.

The promotion of Canada's community (private) sponsorship model is not without risk. The principle of additionality, whereby private sponsorship should only supplement but not supplant publicly financed refugee sponsorship, remains fragile. It is sustained by the vigorous advocacy of individuals and institutions involved in private sponsorship in Canada. Where private sponsorship is promoted in states with no public commitment to refugee resettlement, citizens may understandably balk at assuming the task of sponsorship as a matter of charity, rather than as enhancing the public responsibility to integrate newcomers. A rhetorical embrace of refugee resettlement may appear attractive to politicians seeking another reason to

demonize and to exclude asylum seekers. Conservative Canadian politicians have sometimes pitted resettled refugees against those seeking protection in the inland refugee system, characterizing the latter as undeserving "queue jumpers".[xc] And in practice, undertakings to resettle refugees are unenforceable and, unlike refugee protection, are not underwritten by international legal obligation[xci].

Finally, Canada invests extensive resources in interdiction and deflection at airports and visa offices abroad in service of Canada's control over its territory. Canada maintains an extremely restrictive visa policy, funds border enforcement in the global South to contain refugees in or near countries of origin[xcii], employs "migration integrity" specialists to monitor those boarding planes for Canada, enlists private air carriers to do the same, and has even been implicated in interception at sea.[xciii] While less visible than the coercion of the STCA, Canada's remote-control bordering is more pervasively effective. Ultimately, while Canada is often praised for how it hears refugee claims and how it welcomes resettled refugees, it is critical to recognize how much it does to keep refugees out of earshot and out of sight.[xciv]

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(571 in 2018 to 3,024 in 2019) (Source: "Canada Refugee Statistics", Immigration and Refugee Board of Canada, accessed 9 July 2020: https://irb-cisr.gc.ca/en/statistics/protection/Pages/index.aspx)

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[xlii] See for example the precedential decision issued by the US Attorney General: *Matter of A-B-*, 27 I&N Dec. 316 (AG 2018)

[xliii] Canadian Council for Refugees v R, 2007 FC 1262 (CanLII), [2008] 3 FCR 606: https://www.canlii.org/en/ca/fct/doc/2007/2007fc1262/2007fc1262.html

[xliv] Canadian Council for Refugees v. Canada, 2008 FCA 229 (CanLII), [2009] 3 FCR 136: https://www.canlii.org/en/ca/fca/doc/2008/2008fca229/2008fca229.html

[xlv] The Federal Court of Appeal had refused to hear the Charter arguments because they were brought by public interest organizations with no refugee actually affected by the law before the court. In the 2017 challenge, the same organizations raised these arguments along with directly-affected refugee claimants with obvious standing to challenge the law.

[xlvi] *See, e.g.* Commission of the European Communities v. Hellenic Republic, Case C-72/06, Judgment of the Court (Fifth Chamber) of 19 April 2007

[xlvii] The arguments and evidence are surveyed in the Federal Court's judgment: Canadian Council for Refugees v. Canada (Immigration, Refugees and Citizenship), 2020 FC 770, link: https://www.canlii.org/en/ca/fct/doc/2020/2020fc770/2020fc770.html?searchUrlHash=AAAAAQAHYnJvdXdlcgAAAAAB&resultIndex=3

[xlviii] *Ibid.*

[xlix] Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: https://www.refworld.org/cases,ECHR,4d39bc7f2.html [accessed 8 January 2021]

[l] "Blended Visa Office Referred Program", Government of Canada, accessed on 9 July 2020: https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program/blended-visa-office-program.html

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[lii] Jennifer Hyndman *et al,* "The State of Private Sponsorship in Canada" RRN/CSR Policy Brief Submitted to the Government of Canada, 2 December 2016; see also: Ashley Chapman, "Private Sponsorship and Public Policy", Citizens for Public Justice Report, September 2014; Tom Denton "Unintended Consequences of Canada's Private Sponsorship Program", Paper prepared for the 2013 International Metropolis Conference, accessed 9 July 2020: https://www.hhrmwpg.org/opinion/unintended-consequences-of-canada-s-private-sponsorship-of-refugees-program_102

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[liv] "Asylum claims by year – 2019", Government of Canada, accessed 9 July 2020: https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2019.html

[lv] "Asylum Claims by Year", Government of Canada, accessed 9 July 2020: https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims.html

[lvi] "Irregular Border Crosser Statistics", Government of Canada, accessed 25 November 2020: https://irb-cisr.gc.ca/en/statistics/Pages/Irregular-border-crosser-statistics.aspx

[lvii] "Canada - Asylum Claimants by Province/Territory of Claim, Gender and Claim Month, 2016", Government of Canada Open Government Portal – IRCC, accessed 9 July 2020: (Source: IRCC, https://open.canada.ca/data/en/dataset/b6cbcf4d-f763-4924-a2fb-8cc4a06e3de4

Of a total of 62,980 claims where gender was identified, 34,590 claimants were identified as male and 28,390 claimants were identified as female.

[lviii] "Refugee Claims Statistics" and "Refugee Appeal Statistics", Immigration and Refugee Board, accessed 9 July 2020:https://irb-cisr.gc.ca/en/statistics/protection/Pages/index.aspx and https://irb-cisr.gc.ca/en/statistics/appeals/Pages/index.aspx

[lix]"Asylum Claims by Year", Government of Canada, accessed 9 July 2020: https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims.html Note that the total leaves slight room for error to account for claims made and processed at the very beginning and very end of the year.

[lx] "Refugee Claims Statistics", Immigration and Refugee Board, accessed 9 July 2020: https://irb-cisr.gc.ca/en/statistics/protection/Pages/index.aspx.

Note this figure comes from the total claims recognized in 2019 between "new system" and "legacy system" divided by the total claims finalized in 2019 between "new system" and "legacy system".

[lxi] "Refugee Claims Statistics", Immigration and Refugee Board, accessed 9 July 2020: https://irb-cisr.gc.ca/en/statistics/protection/Pages/index.aspx.

[lxii] "Refugee Appeal Statistics", Immigration and Refugee Board, accessed 9 July 2020: https://irb-cisr.gc.ca/en/statistics/appeals/Pages/index.aspx.

[lxiii] This figure does not include refugee claimants refused at the IRB who are pursuing applications for judicial review at Federal Court or other pre-removal relief from IRCC, the total number of whom that remain in Canada at any given time is not officially tracked. However, to get a sense of this figure from the data available, the Federal Court reports that 1,537 applications for leave and for judicial review brought in refugee matters remained pending before the Court as of 31 December 2019 ("Statistics" Federal Court of Canada, accessed 9 July 2020: https://www.fct-cf.gc.ca/en/pages//about-the-court/reports-and-statistics/statistics-december-31-2019#cont.) Please note that the available data does not provide the number of persons in each application, but only the number of applications (which may contain a family of multiple persons). With respect to pre-removal risk assessments (PRRA), as of 31 August 2019, there were 3,886 persons waiting for a decision on their PRRA application (data based on Access to Information Request on file with author).

[lxiv] "Canada - Asylum Claimants by Top Twenty-Five Countries of Citizenship (2019 ranking)", Government of Canada Open Government Portal – IRCC, http://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_AC_0007_E.xls

[lxv] "Canada - Asylum Claimants by Top Twenty-Five Countries of Citizenship (2019 ranking)", Government of Canada Open Government Portal – IRCC, http://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_AC_0007_E.xls

[lxvi] "Refugee Claims Statistics", Immigration and Refugee Board, accessed 9 July 2020: https://irb-cisr.gc.ca/en/statistics/protection/Pages/index.aspx. Please note again that these totals are the combined sum of positive decisions between "new system" (which is the vast majority of claims determined) and the "legacy" system. Historical data since 2013 is also available at the same link.

[lxvii] "Admission of Resettled Refugees", Government of Canada Open Government Portal – IRCC, accessed 9 July 2020:

http://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_Resettled_0012_E.xls

[lxviii] "Canada – Admissions of Permanent Residents by Country of Citizenship", Government of Canada Open Government Portal – IRCC, accessed 9 July 2020:http://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_PRadmiss_0002_E.xls

[lxix] The International Mobility Program permits are "open" work permits that are not tied to a particular employer. They are granted to persons seen to bring economic, cultural or other benefits to Canada, and/or persons from countries with whom Canada has a free trade agreement. Conversely, the Temporary Foreign Worker Program permits are tied to an employer and granted in response to specific demands of Canada's labour market. These include seasonal agricultural workers and live-in care-givers. For a short breakdown of the two work permit streams, see: http://www.aclrc.com/questionsanswers

[lxx] "Canada – International Mobility Program Work Permit Holders by Country of Citizenship and Year in which Permit(s) became effective", Government of Canada Open Government Portal – IRCC, accessed 9 July 2020: http://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_TR_0014_E.xls

[lxxi] Canada – Temporary Foreign Worker Program Work Permit Holders by Country of Citizenship and Year in which Permit(s) became effective", Government of Canada Open Government Portal – IRCC, accessed 9 July 2020: http://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_TR_0015_E.xls

[lxxii] "Canada - Study permit holders on December 31st by country of citizenship", Government of Canada Open Government Portal – IRCC, accessed 9 July 2020: http://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_TRStudy_0009_E.xls

[lxxiii] *Brown v. Canada*, 2020 FCA 130.

[lxxiv] The full list of grounds for ineligibility are set out at section 101(1) of the IRPA: https://laws.justice.gc.ca/eng/acts/i-2.5/page-19.html#h-275613

[lxxv] Lisa Kaida, Max Stick and Feng Hou, "The Long-term Economic Outcomes of Refugee Private Sponsorship," Statistics Canada Analytical Studies Branch Research Paper Series, January 2020: https://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2019021-eng.htm

[lxxvi] Id.

[lxxvii] Immigration, Refugees and Citizenship Canada (Evaluation Division) "Syrian Outcomes Report," June 2019: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/syrian-outcomes-report-2019.html

[lxxviii] "Global Refugee Sponsorship Initiative", Global Compact on Refugees Digital Platform, accessed 9 July 2020: https://globalcompactrefugees.org/article/global-refugee-sponsorship-initiative

[lxxix] "A data-driven approach to refugees' labour mobility", Global Compact on Refugees Digital Platform, accessed 9 July 2020: https://globalcompactrefugees.org/index.php/article/data-driven-approach-refugees-labour-mobility

[lxxx] "Finding hope in higher education", World University Service of Canada, accessed 9 July 2020: https://srp.wusc.ca/

[lxxxi] "Student Sponsorship for Refugees", Global Compact on Refugees Digital Platform, accessed 25 November 2020: https://globalcompactrefugees.org/article/student-sponsorship-program-canada

[lxxxii] "Canada continues to explore innovative solutions for refugees", Government of Canada, June 25, 2020, https://www.canada.ca/en/immigration-refugees-citizenship/news/2020/06/canada-continues-to-explore-innovative-solutions-for-refugees.html

[lxxxiii] "Pledges and Contributions Dashboard", Global Compact on Refugees Digital Platform, accessed 9 July 2020: https://globalcompactrefugees.org/channel/pledges-contributions

[lxxxiv] IRPA, sections 34-42

[lxxxv] Sean Rehaag, "Judicial Review of Refugee Determinations: the Luck of the Draw" (2012) 38 *Queen's Law Journal* 1; Gerald Heckman, "Unfinished Business: Baker and the constitutionality of the leave and certification requirements under the Immigration Act" (2002), 27 *Queen's Law Journal* 638

[lxxxvi] IRPA, sections 110(3) and 166(e)

[lxxxvii] See Inter-American Commission on Human Rights (IACHR), *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*, 2000, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, Doc. 40 rev. (2000) at para. 15, accessed 9 July 2020: https://www.refworld.org/docid/50ceedc72.html

[lxxxviii] Dagmar Soennecken, "Shifting Back and Up: The European Turn in Canadian Refugee Policy," (2014) 2 *Comparative Migration Studies* 1

[lxxxix] "Canada funding migrant-blocking operations in countries with poor human rights records", CBC News, 11 March 2020, https://www.cbc.ca/news/politics/trudeau-government-irregular-migration-migrants-human-trafficking-1.5492935

[xci] See Kneebone, Susan York and Macklin, Audrey, Resettlement (June 1, 2020). C Costello, M Foster, J McAdam, Oxford Handbook of International Refugee Law (OUP, 2021), U of Melbourne Legal Studies Research Paper No. 913, Available at SSRN: https://ssrn.com/abstract=3659321 or http://dx.doi.org/10.2139/ssrn.3659321.

[xcii] François Crépeau & Delphine Nakache, "Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection" (2006) 12:1 *Immigration and Refugee Policy Choices* 3

[xciii] See Audrey Macklin, "Citizenship, Non-Citizenship and the Rule of Law" (2018) *University of New Brunswick Law Review* 69; "Canada rejects most African student visa applications", Quartz Africa, 13 September 2019, https://qz.com/africa/1708714/canada-rejects-most-african-student-visa-applicants/

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